IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Bail Appl..No. 5031 of 2007()

CP.38/2005 of JUDL. MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM
CRIME NO.97/02 OF KUTTAMPUZHA POLICE STATION

.....

: PETITIONER/3RD ACCUSED

RAJIMON, AGED 27 YEARS,
S/O. KRISHNANKUTTY,
PUNNILAM HOUSE,
KOOVAPPARA.

BY ADV. SRI.S.DILEEP (KALLAR)

RESPONDENTS: COMPLAINANT

STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE,
KUTTAMPUZHA POLICE STATION,REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM
(IINVESTIGATING OFFICER NO. CRIME NO. 97/2002 OF KUTTAMPUZHA POLICE STATION)

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 5031 of 2007

Dated this the 20th day of August, 2007

ORDER

Application for anticipatory bail. There is no representation for the petitioner. The petitioner faces allegations, inter alia, under Section 307 I.P.C. Investigation is complete. Final report has already been filed. Cognizance was taken by the learned Magistrate. The petitioner is the 3rd accused. He was not available before the committal court. The case against the co-accused has been split up and has been committed to the Court of Session. Against the petitioner coercive processes have been initiated by the learned Magistrate. The petitioner apprehends imminent arrest.

2. In the petition it is submitted that the petitioner is absolutely innocent. His absence was not wilful. He is willing to surrender before the learned Magistrate. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Section 438 and/or 482 Cr.P.C may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. It is submitted that the petitioner has been directed to surrender before

the learned Magistrate and seek regular bail in the ordinary course.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. This application for anticipatory bail is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-